IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 222 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
VALIBHAI LADJIBHAI TIMBALIYA - Opponent(s)

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Appearance :
PUBLIC PROSECUTOR for Appellant(s) : 1,
MR ASIFKHAN I PATHAN for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 28/06/2006

ORAL JUDGMENT

1. The appellant – State of Gujarat preferred this appeal under Section 378(1)3) of the Code of Criminal Procedure; 1973 against the order of acquittal dated 12th November, 2002 passed by the

J.M.F.C, Una, in Criminal Case No. 1373 of 2001 acquitting the present respondent from the offence punishable under Sections 279, 337 and 338 of Indian Penal Code r.w. Sections 177 and 184 of the Bombay Motor Vehicles Act vide order dated 12th November, 2002 is impugned in the present appeal.

2. The leave was granted and the appeal was admitted vide order dated 30th November, 2005 of this Court (Coram: Bankim N. Mehta, J.).

3. Heard Shri Patel, learned APP, at length. Shri Patel has vehemently urged that the order passed by the trial Court under Section 258 of the Code of Criminal Procedure; 1973 is errorneous and deserves to be quashed and set aside. It is submitted that the record shows that no adequate opportunity was afforded to the prosecution to prove its case.

4. The brief facts leading to the filing of the present appeal is to be narrated as under:-

The case of the prosecution was that on 19th August, 2001 at 15.30 hours, the complainant and witness were hit by the ST Bus bearing No. GJ.18.V.4939, which was driven by the accused – respondent rashly and negligently and thereby committed offence under Sections 279, 337 and 338 of Indian Penal Code r.w. Sections 177 and 184 of the Bombay Motor Vehicles Act, injuring the witness and the complainant. The offence came to be registered at Una police station being First Information Report No. 203 of 2001. The trial Court recorded plea of denial on 1st May, 2002. Thereafter, the record says that enough opportunity was given to the prosecution but, it seems that the same was not availed and ultimately, on 12th November, 2001 the trial Court was constrained to make an order under Section 258 of the Code of Criminal Procedure; 1973.

5. The brief reasons narrated by the trial Court show that the trial Court has not committed any

error in passing the order. This Court in case of ***STATE OF GUJARAT V/S. RANA BAHUBHAI VARDHIRAM*** reported in **1984 (1) GLR Page-77** observed that prosecution must proceed with the complaint diligently when the complainant and witnesses are not remaining present. The prosecution must come forward and state before the Court that the witnesses are not available.

6. The reasoning assigned by the learned trial Court is supported by finding of the fact, and the appellant have failed in dislodging the same. In this view of the matter, this Court is of the considered opinion that in this acquittal appeal no interference is called for and the appeal deserves to be dismissed and is, accordingly, dismissed.

(S.R.BRAHMBHATT, J.)

kdc.